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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,922	03/19/2004	Raymond R. Neiser	0100352.0517300	8210

26874 7590 02/14/2005

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EXAMINER
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BIDWELL, JAMES R

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/804,922

Applicant(s)

NEISER ET AL.

Examiner

James R Bidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07/15/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8, 9, 11, 12, 14, 15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrity (U.S. Patent 5,060,785) in view of Fisher (U.S. Patent 5,490,587).

Garrity shows a pair of spaced conveyor side frames mounting a plurality of rollers, a drive member 29 below the rollers, a motor for the drive member and at least one drive element 28 connecting the drive member to a plurality of the rollers. Not shown is an incline. However, shown by Fisher is a similar conveyor on an incline. To incline Garrity would have been obvious and well within the skill of the art as the conveyor would still function in it's intended manner while the incline might reduce the drive forces needed to move articles.

Re claim 2, shown is a control 50 which will determine when the motor drives the drive member 29.

Re claim 3, shown is at least one sensor 14 for sensing articles on the conveyor 10.

Re claim 4, the sensor senses in an area above the conveying surface, at least some of the area is along both a width and length of the conveyor.

Re claim 5, shown are downstream sensors at an exit end.

Re claim 6, the sensors are connected to control 50.

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Re claim 8, Fisher teaches the concept of having some powered rollers and some driven rollers in each conveyor section.

Re claim 9, it is inherent and obvious and well within the skill of the art to make a section out of a plurality of frame members.

Re claim 11, 29 is a tube.

Re claim 12, as admitted by Applicant in the specification self-driven tubes are well known.

Re claim 14, Fisher shows a plurality of sections having both gravity and powered portions.

Re claim 15, accumulator type conveyors work by knowing where the articles are located on the various sections.

Re claims 17 and 18, as per rejection of claims 11 and 12.

Claims 7, 10, 13 and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Garrity in view of Fisher as applied to claims 1, 6, 14 and 15 above, and further in view of Maxted (U.S. Patent 4,039,074).

Garrity and Fisher do not show skewed rollers. However, shown by Maxted are skewed rollers 12. To skew the rollers on Garrity's modified apparatus would have been obvious to one of ordinary skill in the art as it would provide a well known alignment function.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication should be directed to James R Bidwell at telephone number (703)308-1144.

JRB

02-10-2005

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PRIMARY EXAMINER  
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2/10/05  
3651